

**To:** Mahmud, Shahid[Mahmud.Shahid@epa.gov]  
**From:** Hudiburgh, Gary  
**Sent:** Wed 8/12/2015 6:00:50 PM  
**Subject:** RE: Congressmen: EPA Must Answer For Spilling Toxic Waste

Shahid –

Some ideas

# Attorney Client/Ex. 5

**From:** Mahmud, Shahid

**Sent:** Wednesday, August 12, 2015 1:45 PM

**To:** Adams, Bill; Biggs, Kirby; Carr, Lofton; Casanova, Rafael; Doolan, Mark; Gunter, Jason; Hanley, Jim; Hathaway, Ed; Hillenbrand, John; Hoogerheide, Roger; Jackson, Brad; Jenkins, Joy; Mahmud, Shahid; Mahoney, Michael; Marcy, Ken; Moreen, Ed; Price, Lisa; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Sparks, Sara; Teichert, Candice; Tomten, Dave; Adams, Bill; Autrey, Brad; Aycock, Jim; Baumgarten, Gary; Bless, Diana; Butler, Barbara; Carr, Lofton; Chadwick, Dan; Cherepy, Andrea; Conway, Bette; Cozza, Daniel; Cruz, Francisco; Desai, Sheila; Deschambault, Lynda; Devito, Steve; DiCosmo, Nefertiti; Dixon, Douglas; Doolan, Mark; Forren, John; Forrest, Sabrina; Geselbracht, Jeanne; Godsey, Cindi; Goodrick, John; Grandinetti, Cami; Hanley, Jim; Hardy, Michael; Hathaway, Ed; Hillenbrand, John; Hood, Lynne; Housman, Van; Hudiburgh, Gary; Jackson, Brad; Jenkins, Joy; Jessop, Carter; Byrne, Jim; Johnson, Brent; Long, Larry; Lavaty, Ann; Lazorchak, Jim; Lensink, Andy; Lesser, Ben; Ellis, Lisa; Low, Seth; Mahmud, Shahid; Mahoney, Michele; Manoyan, Simon; Marcy, Ken; Mayer, Kevin; Miller, Anna; Egidi, Philip; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Roy, Stephen; Russell, Carol; Teichert, Candice; Teitelbaum, Daniel; Tiago, Joseph; Tomten, Dave; Watt, Jamey; Wilkening, Matt

**Subject:** Fw: Congressmen: EPA Must Answer For Spilling Toxic Waste

**Importance:** High

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EPA Abandoned Mine Lands Team  
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**From:** Lesser, Ben  
**Sent:** Wednesday, August 12, 2015 1:33 PM  
**To:** Mahmud, Shahid  
**Subject:** Congressmen: EPA Must Answer For Spilling Toxic Waste

Daily Caller News Foundation

Congressmen: EPA Must Answer For Spilling Toxic Waste

Michael Bastasch, 1:17 PM 08/12/2015

Republican congressmen are calling for the EPA to be held accountable for spilling 3 million gallons of toxic mine wastewater into the Animas River last week, especially since the agency is a government entity and won't be punished to the same degree a private company would for spilling waste.

"The EPA must be held accountable for its actions," Rep. Lamar Smith told The Daily Caller News Foundation in an emailed statement. "If a private company caused such a disaster, it would be hit with substantial penalties and would be required to pay for cleanup."

"In this case, it will be the taxpayers who foot the bill," the Texas Republican said. "The EPA has an obligation to the families and businesses that have been devastated by this spill."

The EPA has taken the responsibility for the spill and agency chief Gina McCarthy is set to visit areas of Colorado and New Mexico that have been harmed by the spill. Both Colorado and New Mexico have declared a state of emergency and allocated funding towards helping those affected by the spill.

McCarthy's visit, however, is unlikely to be a happy one, as state officials and residents are furious with the agency for accidentally spilling millions of gallons of waste. The spill has already forced tourism businesses in the area to close until the contaminants in the river return to safe

levels.

Republican lawmakers are already demanding the EPA turn over information on the spill and hold regular briefings with lawmakers on the agency's progress.

"This has and will continue to lead to significant economic damage to local businesses, farmers, tribes, and residents," Sen. Jim Inhofe, an Oklahoma Republican, said in a statement. "I will work within the Committee and with my colleagues in Congress to ensure the EPA is held accountable to this grave incident and that those impacted are provided the necessary support to move forward."

Republicans have specifically pointed out the EPA won't be subject to the same level of scrutiny as a private company would. As a government agency the EPA can't fine itself the way it would fine a private entity for spilling toxic waste. Many other mining companies have been fined millions of dollars for spills that were likely smaller than the one at Gold King Mine.

"Sovereign immunity. The government doesn't fine itself," Thomas Sansonetti, a former assistant attorney general at the Justice Department, told the Washington Times. "The EPA does not fine itself the way that you would fine an outside company like BP."

So how much would a private company have to pay for a spill of this size? It's not exactly clear, but it would likely be a sizable fine.

"The CWA does not specify how much a fine for this should be," M. Reed Hopper, an attorney with the Pacific Legal Foundation, told The Daily Caller News Foundation. "I believe the Army Corps of Engineers or EPA would have to take into account the amount of the spill, the harm done to the environment, and the negligence of the agency in causing the spill."

While there are many considerations that go into fining a private party for violating the CWA, the EPA's website contains information on the punishment for those who "negligently or knowingly" discharges pollutants "from a point source into a water of the United States without" a permit or in excess of a permit.

(Note: "knowingly" discharging a pollutant can apply to parties who may actually be aware they're violating the law)

The EPA's website says a negligent violation could carry a one-year penalty and/or \$2,500 – 25,000 per day" in fines — and that's per violation. The EPA adds that knowing violations can carry a "3 years and/or \$5,000 – 50,000 per day" penalty.

"So, the fine would be on some sort of sliding scale, but would be substantial for a private party," Hopper said. "Depending on the content of the discharged material, other federal laws may come into play such as CERCLA (Superfund) and clean up costs could be levied against the discharger at a very steep price. As for whether a private party would be criminally liable, some have gone to jail for less."

Interestingly enough, private actors who have been found guilty of spilling waste in waterways have been fined millions of dollars. In March 2011, Consol Energy was fined \$5.5 million for violating the Clean Water Act (CWA) by emitting chloride and other pollutants into a West Virginia creek. On top of that, the company was forced to install \$200 million in water pollution

controls.

That same month, Arch Coal was fined \$4 million for violating the CWA by discharging more waste into Appalachian waterways than their federal permits allowed. The company also had to take measures to ensure the spills never happened again. The next month, a subsidiary of Monsanto was slapped with a \$1.4 million fine for discharging wastewater with selenium and other heavy metals without a permit in Idaho — the company paid \$875,000 monitoring equipment.

Read more: <http://dailycaller.com/2015/08/11/epa-employees-load-obama-dems-with-dough/#ixzz3icglZPqj>